

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESAL PRICE LITIGATION

MDL No. 1456

Civil Action No. 01-12257-PBS

THIS DOCUMENT RELATES TO:
ALL CLASS ACTIONS

Judge Patti B. Saris

**SCHERING-PLOUGH CORPORATION'S AND WARRICK
PHARMACEUTICALS CORPORATION'S SUPPLEMENTAL MEMORANDUM
REGARDING GENERIC AND MULTI-SOURCE DRUGS**

During the hearing on May 23, 2006, the Court indicated it would first decide "cross-cutting" issues and address other issues as individual defendant trials approach. Schering-Plough Corporation and Warrick Pharmaceuticals Corporation respectfully submit that generic and multi-source drugs present these cross-cutting issues from a perspective different from that of branded drugs, and both perspectives are necessary for a proper understanding and resolution of the issues. *See, e.g., In re Pharm. Indus. Average Wholesale Price Litig.*, 230 F.R.D. 61, 67-71 (D. Mass. 2005) (comparing the roles of AWP in reimbursement of branded and generic drugs); 2/9/05 Report of Independent Expert Prof. Ernst R. Berndt (Docket No. 1384) ¶¶ 33-60 (discussing AWP and "spread" for generic drugs in particular).

The memorandum submitted by Schering-Plough Corporation and Warrick Pharmaceuticals Corporation was the only one to provide the perspective of generic and multi-source drugs on these cross-cutting issues. (*See* Mem. in Supp. of Schering-Plough Corporation's and Warrick Pharmaceuticals Corporation's Mot. for Summ. J. as to Class 2

Claims (Mar. 15, 2006) (Docket No. 2265) at 1-6, 10-16, 20-23; *see also* Pls.' Mem. in Opp'n to Schering-Plough Corporation's and Warrick Pharmaceuticals Corporation's Mot. for Summ. J. as to Class 2 Claims (Apr. 7, 2006) (filed under seal) at 19-22; Reply Mem. in Supp. of Schering-Plough Corporation's and Warrick Pharmaceuticals Corporation's Motion for Summ. J. as to Class 2 Claims (Apr. 28, 2006) (Docket No. 2493) at 1-8, 9-10.) Accordingly, it is respectfully suggested that the Court consider this memorandum in conjunction with the joint memorandum in resolving "cross-cutting" issues.

Respectfully submitted,

SCHERING-PLOUGH CORPORATION AND
WARRICK PHARMACEUTICALS
CORPORATION

By its attorneys,

/s/ John T. Montgomery

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Dated: June 1, 2006

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2006, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ Eric P. Christofferson
Eric P. Christofferson